

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

TOM HUSSEY PHOTOGRAPHY, LLC,

Plaintiff,

v.

BDG MEDIA, INC.,

Defendant.

C.A. No. 20-404-MN

**DECLARATION OF JESSICA STUKONIS IN SUPPORT OF DEFENDANT BDG  
MEDIA, INC.'S MOTION TO DISMISS OR TRANSFER**

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*Attorneys for Defendant  
BDG Media, Inc.*

I, JESSICA STUKONIS, declare as follows:

1. I am Senior Counsel of Legal Affairs at BDG Media, Inc. (“BDG”). I have worked at BDG since April 2, 2018. I have personal knowledge of the following facts and, if called and sworn as a witness, could and would competently testify thereto.

2. BDG is a media company that owns and operates a number of websites on varied topics of general and special interest. One of BDG’s websites is Flavorwire.com.

3. BDG is incorporated in Delaware and is headquartered in Manhattan in New York City, New York (the “BDG Headquarters”). BDG presently has approximately 283 full-time employees working in New York, New York, which is the city where BDG’s Headquarters is located, and an additional 161 employees working in New York, New York. These include writers, editors, members of BDG’s legal department, and all of BDG’s executives.

4. BDG also has 20 full-time employees in Los Angeles, and nine full-time staffers in London who are employed through a professional employer organization.

5. The article referenced in Plaintiff’s Amended Complaint in this matter, located at <https://www.flavorwire.com/164201/photo-gallery-reflection-of-time>, was published on March 23, 2011 (the “Subject Article”). BDG did not own Flavorwire.com in 2011. To my knowledge, Flavorwire.com was then owned by Flavorpill Productions LLC d/b/a Flavorpill Media. BDG did not acquire Flavorwire.com until approximately August 6, 2018.

6. As of December 2019, Flavorwire.com is no longer operational, although the website is still accessible. Any current employees of BDG that would have knowledge regarding content that was posted to Flavorwire.com prior to December 2019 are located at BDG Headquarters, and the BDG freelancer currently responsible for sending out regular Flavorwire

newsletters is located in Finland. Similarly, all decisions regarding general policies and procedures for posting content to BDG-owned websites are made at BDG Headquarters.

7. The writer of the Subject Article, Caroline Stanley, was never an employee of BDG.

8. The BDG employees that could testify as to BDG's policies regarding the use of photographic content and the protection of copyrights are located in New York City. The BDG employees that could testify as to the revenue generated by any given article on Flavorwire.com, and the amount of any revenue attributable to a particular article (if any), are located in New York City.

9. BDG's internal servers are located in New York City. Documents reflecting the number of views the Subject Article drew are located on BDG's servers in New York City. Documents related to BDG's policies regarding the selection of photographic content, and documents related to BDG's policies regarding the protection of intellectual property rights, are stored on BDG's servers in New York City.

10. Flavorwire.com is equally accessible from anywhere in the world.

11. BDG uses Google Analytics to measure traffic to BDG's websites, including to individual articles on Flavorwire.com. Based on a report generated by Google Analytics, the Subject Article received a total of 482 unique page views since August 2018, with a reported value of \$0.00. Screenshots from that report are attached to this Declaration as Exhibit 1.

12. Google Analytics is capable of providing generalized information regarding the geographical source of web traffic to BDG's websites and individual articles. Since the Subject Article was first posted in 2011, 0.14% of the total sessions on the Flavorwire.com website appear to have originated in Delaware. It is not possible, however, to determine whether any of

the views of the Article occurring since August 2018 originated in Delaware, as Google Analytics reports the total number of such Delaware views to be less than 1.

13. Most members of BDG's legal department work from New York, New York, the city where BDG Headquarters is located. Having to travel to Delaware for trial, hearings, depositions, conferences and mediation would be time-consuming and disruptive for me and my legal team. It would be more convenient for me and my legal team to attend to this case if it were in New York City.

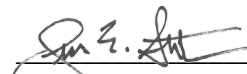
14. All BDG executives with authority to settle this dispute are also in New York City. To the extent travel to Delaware would be required, it would be disruptive and time consuming for BDG executives to do so.

15. Having to travel to Delaware for trial, hearings and depositions, would be time-consuming and disruptive for BDG employees who might serve as witnesses in this matter.

16. Upon first notice by plaintiff Tom Hussey Photography, Inc.'s counsel to BDG of the purportedly infringing uses of the images at issue, BDG removed such images from the Subject Article. This removal occurred before the original Complaint was filed on March 20, 2020 (*see* D.I. 1). Attached hereto as Exhibit 2 are true and correct copies of screen captures of the Subject Article taken at my direction by a BDG employee on January 20, 2020, which demonstrate that the Subject Article no longer contained the images at issue as of that date.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on this 17 day of March, 2021.

  
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Jessica Stukonis